Hartawan Development Sdn Bhd v Pentadbir Tanah Daerah Melaka

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO M-01(NCVC)(A)-29–02 OF 2016
ZAWAWI SALLEH, VERNON ONG AND ABDUL RAHMAN SEBLI JJCA
11 NOVEMBER 2016

Land Law — Acquisition of land — Compensation — Dissatisfaction and objections over amount of compensation — Matter referred to High Court for determination — High Court awarded, additional compensation and injurious affection for lands — Whether court had jurisdiction to hear appeal — Whether decision of court below appealable — Land Acquisition Act 1960 ss 38, 40D & 49(1)

The appellant's land ('the said land') was subjected to acquisition under the Land Acquisition Act 1960 ('the Act') for the purpose of 'Tapak Pencawang Masuk Utama'. The said land was *gazetted* for acquisition pursuant to s 8 of the Act vide *Warta* Kerajaan Negeri Melaka No 484 dated 21 August 2014. The land administrator conducted an enquiry pursuant to s 12 of the Act to determine the amount of compensation payable to the appellant. The appellant objected the amount of compensation awarded by the land administrator by requesting the land administrator to refer the matter to the court for its determination pursuant to s 38 of the Act. The appellant was dissatisfied with the decision of the High Court, hence the present appeal. The issues to be determined here were (a) whether the court had jurisdiction to hear the appeal; and (b) whether the decision of the court below was appealable under s 49(1) of the Act as it involved a question of law.

Held, striking out the appeal with costs of RM5,000 and ordering the deposit to be refunded to the appellant:

(1) Sections 40D(3) and 49(1) of the Act expressly provided that the judgment or order of the High Court in respect of the amount of compensation awarded was final and there should be no further appeal to a higher court on the matter. The appellant was therefore precluded from appealing against the order of compensation issued by the High Court (see paras 21 & 25).

(2) The present appeal in substance pertained to the alleged inadequacy of compensation awarded by the High Court. Thus, in essence, the appellant was challenging the award of compensation decided by the assessors. The contention of the appellant that the present appeal

involved a question of law flew on the face of the appellant's notice of appeal. The present appeal was nothing more than an attempt to circumvent the salient provisions of ss 40D and 49(1) of the Act (see paras 27 & 30).

[Bahasa Malaysia summary

Tanah perayu ('tanah tersebut') adalah tertakluk kepada pengambilan tanah di bawah Akta Pengambilan Tanah 1960 ('Akta') bagi tujuan 'Tapak Pencawang Masuk Utama'. Tanah tersebut *diwartakan* untuk pengambilan berikutan s 8 Akta melalui *Warta* Kerajaan Negeri Melaka No 484 bertarikh 21 Ogos 2014. Pentadbir tanah melakukan siasatan berikutan s 12 Akta untuk menentukan jumlah pampasan yang boleh dibayar kepada perayu. Perayu membantah jumlah pampasan yang diawardkan oleh pentadbir tanah dengan memohon kepada pentadbir tanah untuk merujuk perkara kepada mahkamah bagi penentuannya berikutan s 38 Akta. Perayu tidak puas hati dengan keputusan Mahkamah Tinggi, maka rayuan ini. Isu-isu untuk ditentukan di sini adalah (a) sama ada mahkamah mempunyai bidang kuasa untuk mendengar; dan (b) sama ada keputusan mahkamah bawahan boleh dirayu di bawah s 49(1) Akta kerana ia melibatkan soalan undang-undang.

Diputuskan, membatalkan rayuan dengan kos sebanyak RM5,000 dan memerintah deposit dipulangkan semula kepada perayu:

(1) Seksyen 40D(3) dan 49(1) Akta secara nyata memperuntukkan bahawa penghakiman atau perintah Mahkamah Tinggi berkaitan jumlah pampasan yang diawardkan adalah muktamad dan sepatutnya tidak terdapat rayuan selanjutnya kepada mahkamah lebih tinggi atas perkara tersebut. Perayu oleh itu terhalang daripada merayu terhadap perintah pampasan yang dikeluarkan oleh Mahkamah Tinggi (lihat perenggan 21 & 25).

(2) Rayuan ini pada amnya berkaitan kepada kekurangan pampasan yang diawardkan oleh Mahkamah Tinggi. Oleh itu, pada dasarnya, perayu mencabar award pampasan yang diputuskan oleh penaksir. Hujahan perayu bahawa rayuan ini melibatkan soalan undang-undang adalah bertentangan notis rayuan perayu. Rayuan ini tidak lebih daripada percubaan untuk memintas peruntukan menonjol ss 40D dan 49(1) Akta (lihat perenggan 27 & 30).]

Notes

For cases on compensation, see 8(2) *Mallal's Digest* (5th Ed, 2017 Reissue) paras 2345–2404.

Cases referred to

Asean Security Paper Mills Sdn Bhd v Mitsui Sumitomo Insurance (Malaysia Bhd) [2008] MLJU 251; [2008] 6 CLJ 1, FC (refd)
Bertam Consolidated Rubber Co Ltd v Pemungut Hasil Tanah, Seberang Perai Utama, Butterworth [1989] 2 MLJ 178, HC (refd)
Calamas Sdn Bhd v Pentadbir Tanah Batang Padang [2011] MLJU 1528; [2011] 5 CLJ 125, FC (refd)
Dato' Seri Anwar bin Ibrahim v Public Prosecutor [2010] 5 MLJ 145; [2010] 7 CLJ 397, FC (refd)
Duport Steels Ltd and others v Sirs and others [1980] 1 All ER 529; [1980] 1 WLR 142, QBD (refd)
Jitender Singh a/l Pagar Singh & Ors v Pentadbir Tanah Wilayah Persekutuan and another appeal [2012] 1 MLJ 56; [2012] 2 CLJ 165, CA (refd)
Koriah bt Sudar v Pentadbir Tanah Kuala Langat [2013] 3 MLJ 695; [2013] 5 CLJ 571, CA (refd)
Malakoff Bhd & Anor v Pentadbir Tanah, Kedah [2004] 1 MLJ 569, FC (refd)
McCain and City of Saint John, Re [1965] 47 DLR (2d) 164, SC (refd)
Ng Chin Chai v Pentadbir Tanah Segamat and other appeals [2016] MLJU 1702; [2016] 4 CLJ 693, CA (refd)
Pentadbir Tanah Daerah Seberang Perai Tengah & Anor v Bagan Serai Housing Estate Sdn Bhd [2016] 5 MLJ 674; [2016] 8 CLJ 846, CA (refd)
Sia Cheng Soon & Anor v Tengku Ismail bin Tengku Ibrahim [2008] 3 MLJ 753; [2008] 5 CLJ 201, FC (refd)
Tan Sri Eric Chia Eng Hock v Public Prosecutor (No 1) [2007] 2 MLJ 101; [2007] 1 CLJ 565, FC (refd)
Taylor and another v Lawrence and another [2002] 2 All ER 353, CA (refd)

Legislation referred to

Courts of Judicature Act 1964 ss 67, 68
Federal Constitution art 121
Land Acquisition Act 1960 ss 8, 12, 38, 40A, 40D, 40D(1), (2), (3), 48, 49, 49(1), Form N

Appeal from: Land Reference No 15NCVC-04–01 of 2016 (High Court, Malacca)

Kee Tong Kiak (Chee Siah Le Kee & Partners) for the appellant.
Yusliza bt Awal (Muzila bt Arshad with her) (Legal Advisor, Melaka State Legal Advisor's Office) for the respondent.

Zawawi Salleh JCA (delivering judgment of the court):

THE ANTECEDENT

[1] This was an appeal by the appellant against the decision of the learned judicial commissioner ('JC') in respect of a land acquisition matter. On 21 December 2015, the learned JC, aided by two assessors, made the following award:

Total land area acquired by the respondent	:	44900 sq meters
The unencumbered portion	:	39,534.27 sq meters @ RM67
		= RM 2,648,796.00
The encumbered portion	:	5,365.73 sq meters @ RM54
		= RM 289,749.42
Severance	:	67,742 sq meters @ RM6.70
		= RM 453,871.00
Total compensation	:	RM 3,392,416.42
Less compensation paid by Land Administrator	:	RM 2,238,972.00
Additional Compensation Awarded	:	RM 1,153,444.42.

[2] The learned JC also ordered that interest of 8%pa be paid on the additional compensation sum awarded pursuant to s 48 of the Land Acquisition Act 1960 ('the Act').

[3] Being dissatisfied with the decision, the appellant has now appealed to this court.

BACKGROUND FACTS

[4] The background facts of the case may be shortly stated as follows. The appellant's land, described as GM17277, Lot 701, Mukim Paya Rumput, District of Melaka Tengah, Melaka, was subjected to acquisition under the Act for the purpose of 'Tapak Pencawang Masuk Utama'.

[5] The said land was *gazetted* for acquisition pursuant to s 8 of the Act vide *Warta* Kerajaan Negeri Melaka No 484 dated 21 August 2014. The land concerned was part of an estate land known as Ladang Bertam. The total land area of Lot 701 was 7.7926 hectares (77926 sqmt) and the land area to be acquired was 44900 sqmt.

[6] In the mid-section of Lot 701 was a Tenaga Nasional Bhd ('TNB') rentis measuring 5,365.73 sqmt. TNB only acquired a right of way on part of Lot 701. The right of way was registered on 30 April 2002.

[7] The land administrator conducted an enquiry pursuant to s 12 of the Act to determine the amount of compensation payable to the appellant. At the conclusion of the enquiry, the land administrator awarded compensation in the sum of RM2,238,972.

[8] On 11 December 2014, the appellant objected to the amount of compensation awarded by the land administrator by filing Form N, requesting the land administrator to refer the matter to the court for its determination pursuant to s 38 of the Act.

[9] The appellant raised the following arguments in support of its claim:

(a) the land administrator was wrong to award compensation on the basis that the land concerned was part of estate land;

(b) the acquisition of the land has injurious effect on the appellant's remaining land. The building of the Tapak Pencawang Utama would lower the value of the remaining land; and

(c) the acquisition will result in the appellant having no access road to the appellant's other lands.

[10] As alluded to earlier, the learned JC heard the land reference with the aid of two assessors pursuant to s 40A of the Act.

[11] In his judgment at pp 21–22 of the record of appeal, the learned JC had this to say:

> 12. Hence, the two assessors are of the view that the land should be valued as agriculture land with development potential. A reading of section 40D(1) of the LAA shows that the assessors have the discretion to choose the comparable for purposes of preparing their respective opinion on the land value for me to value. All that is required from them is to make adjustments based on the features of the subject land shown by the evidence in this case.
>
> 13. On the issue of injurious effect to the applicant as a result of the acquisition, I concur with the two assessors that there exist none. Although the acquisition is intended for purposes of erecting 'Tapak Pencawang Masuk Utama' as declared in the gazette Notification, the TNB transmission lines and rentice have been in existence on the land prior to the acquisition (see page 6 paragraph 1 and Appendix V of the Applicant's Valuation Report). This has already caused the value of the land to diminish. Therefore, the submission that the building of the Tapak Pencawang Utama will lower the value of the remaining land is therefore, a non-starter.

A ...

15. On the issue of severance of Lots 703 and Lot 492, the assessors are of the view that compensation is due.

16. This Court also orders that the Respondent do all things necessary to grant right B of way to the applicant to their lands affected by the acquisition to be carried out within 3 months thereof with an extension of two additional months as the case may be.

17. As a Judge hearing a land reference matter with two assessors appointed pursuant to section 40A of the LAA, my role is to decide on the issue of law and facts C which includes the admissibility of evidence. The issue of land value is strictly for the two assessors to give their opinion at the end of the hearing.

18. In the proceedings before me, the two assessors having conferred with each other arrived at the same opinion on the value of the land. That being the case, I am bound to accept their unanimous decision on the value of the lands. D

THE APPEAL

[12] The appeal came up for hearing on 21 Jun 2016. At the outset of the E appeal, learned assistant state legal advisor ('ASLA') appearing for the respondent raised a preliminary objection and contended that this appeal was not maintainable and this court did not have jurisdiction to hear the matter in view of the provisions of s 40D(3) and the proviso to s 49(1) of the Act and the notice of appeal filed by the appellant ought to be struck out in limine.

F

[13] Learned ASLA urged upon us that there can be no right of appeal unless it be specifically provided for and that without statutory conferment, the right cannot lie. He submitted further that the ladder to the next level by way of appeal must be expressly given by law and such right cannot even be implied or G inferred. Section 40D(3) and proviso to s 49(1) of the Act have expressly precluded the right of appeal in the matter concerned (*Koriah bt Sudar v Pentadbir Tanah Kuala Langat* [2013] 3 MLJ 695; [2013] 5 CLJ 571).

[14] Learned counsel for the appellant readily conceded that the appellant H was precluded form appealing against the amount of compensation awarded by the court below. However, learned counsel posited that in this instant appeal, the decision of the High Court was appealable under s 49(1) of the Act as it is involved a question of law and not the award of compensation simpliciter. The main plank of the argument of learned counsel was that the learned JC and two I assessors erred when they dismissed the appellant's claim for compensation due to injurious affection but allowed the claim for severance and fixed it at 10% of the market value of the affected lands. In fact, the appellant had abandoned the claim for severance. Therefore, they must have mistaken the claim for injurious affection as severance.

[15] In support of his submission, learned counsel referred us to the following cases: A

(a) *Bertam Consolidated Rubber Co Ltd v Pemungut Hasil Tanah, Seberang Perai Utama, Butterworth* [1989] 2 MLJ 178; and

(b) *Malakoff Bhd & Anor v Pentadbir Tanah, Kedah* [2004] 1 MLJ 569. B

[16] Learned counsel concluded his submission by arguing that the appellant was entitled to compensation due to injurious affection as follows:

(a) market value — RM67.00 per sqmt; C

(b) diminution in value at 10% — RM6.70 per sqmt;

(c) land area for remaining portion of Lot 701 and of 698, 893, 700 and 5248 — 223,89 sqmt; and

(d) amount of compensation — RM1,500,069.70. D

OUR DECISION

[17] The preliminary objection raised by the respondent was whether this court had jurisdiction to hear the appeal. It is trite that once jurisdiction is challenged, the court may not decide on the merits of the case without first determining whether it has jurisdiction over the subject-matter (*Pentadbir Tanah Daerah Seberang Perai Tengah & Anor v Bagan Serai Housing Estate Sdn Bhd* [2016] 5 MLJ 674; [2016] 8 CLJ 846 (CA)). E F

[18] Translated from the Latin, 'jurisdiction' means 'the power to speak the law' (from *uris ius* — meaning 'law' — and *dicere* — meaning 'to speak'). It confers upon the court the power to decide any matter in controversy. It pre-supposes the existence of a duly constituted court with full control over the subject matter under consideration. It pre-supposes full control by the court of the parties to the subject matter under adjudication. Jurisdiction defines the power of a court to inquire into facts, to apply the relevant law, to make decisions and to declare the final outcome of the subject matter under its inquiry (*Dato' Seri Anwar bin Ibrahim v Public Prosecutor* [2010] 5 MLJ 145; [2010] 7 CLJ 397; *Asean Security Paper Mills Sdn Bhd v Mitsui Sumitomo Insurance (Malaysia Bhd)* [2008] MLJU 251; [2008] 6 CLJ 1; *Tan Sri Eric Chia Eng Hock v Public Prosecutor (No 1)* [2007] 2 MLJ 101; [2007] 1 CLJ 565; *Sia Cheng Soon & Anor v Tengku Ismail bin Tengku Ibrahim* [2008] 3 MLJ 753; [2008] 5 CLJ 201 and *Taylor and another v Lawrence and another* [2002] 2 All ER 353). G H I

[19] Under our legal system, the superior courts are established under art 121 of the Federal Constitution. The jurisdiction of the Federal Court and

Court of Appeal is defined by both the Federal Constitution and the Courts of Judicature Act 1964 (revised 1972) ('the CJA 1964') while that of the High Court is defined only by the CJA 1964.

[20] Under s 67 of the CJA 1964, the Court of Appeal has jurisdiction to hear and determine appeals from any judgment or order of any High Court in any civil cause or matter, whether made in the exercise of its original or of its appellate jurisdiction. Appeals to the Court of Appeal are, however, restricted by s 68. The section provides that no appeal lies in the following cases:

(a) where the amount or value of the subject-matter of the claim (exclusive of interest) is less than two hundred and fifty thousand ringgit except with the leave of the Court of Appeal;

(b) where the judgment or order is made by consent of parties;

(c) where, the judgment or order relates to costs only which by law are left to the discretion of the High Court except with the leave of the Court of Appeal; and

(d) *where by any written law for the time being in force, the judgment or order of the High Court, is expressly declared to be final.* (Emphasis added.)

[21] Sections 40D(3) and 49(1) of the Act expressly provide that the judgment or order of the High Court in respect of the amount of compensation awarded is final and there shall be no further appeal to a higher court on the matter.

[22] For ease of reference, we reproduce below the relevant statutory provisions under ss 40D and 49 which specifically deal with appeals in respect of land acquisition. Subsections 40D(1), (2) and (3) of the Act state as follows:

> 40D Decision of the court on compensation
>
> (1) In a case before the Court as to the amount of compensation or as to the amount of any of its terms the amount of compensation to be awarded shall be amount decided upon by the two assessors.
>
> (2) Where the assessors have each arrived at a decision which differs from each other then the Judge, having regard to the opinion of each assessor, shall elect to concur with the decision of one of the assessors and the amount of compensation shall be the amount decided by that assessor.
>
> (3) Any decision made under this section is final and there shall be no further appeal to a higher court on the matter.

[23] Section 49(1) of the Act stipulates that:

> Any person interested, including the Land Administrator and any person or

corporation on whose behalf the proceedings were instituted pursuant to s 3 of the appeal from a decision of the court to the Court of Appeal and to the Federal Court.

Provided that where the decision comprises an award of compensation there shall be no appeal thereform. (Emphasis added.)

[24] We are of the considered view that the statutory words stated above are plain and unambiguous. Therefore, we are bound to construe them in their natural and ordinary sense and give effect to Parliament's expressed intent. It is not for the court to rewrite the law and encroach into the jurisdiction of the Legislature. Lord Diplock pithily encapsulated this in *Duport Steels Ltd and others v Sirs and others* [1980] 1 All ER 529; [1980] 1 WLR 142 at pp 157B–158C:

Where the meaning of the statutory words is plain and unambiguous it is not for the judges to invent fancied ambiguities as an excuse for failing to give effect to its plain meaning because they themselves consider that the consequences of doing so would be inexpedient, or even unjust or immoral.

[25] The judicial interpretation of the above provisions by the Federal Court in the case of *Calamas Sdn Bhd v Pentadbir Tanah Batang Padang* [2011] MLJU 1528; [2011] 5 CLJ 125 clearly shows that the High Court is the final arbiter for the amount of compensation payable under the Act. The appellant is, therefore, precluded from appealing against the order of compensation issued by the High Court. There is a plethora of Court of Appeal cases to that effect, to name but a few: *Jitender Singh a/l Pagar Singh & Ors v Pentadbir Tanah Wilayah Persekutuan and another appeal* [2012] 1 MLJ 56; [2012] 2 CLJ 165 and *Koriah Sudar v Pentadbir Tanah Kuala Langat, Ng Chin Chai v Pentadbir Tanah Segamat and other appeals* [2016] MLJU 1702; [2016] 4 CLJ 693.

[26] It is also pertinent to note that whilst precluding the right of appeal against the order of compensation issued by the High Court, there are four new sections introduced by the Land Acquisition (Amendment) Act 1997 with came into force on 1 March 1998. These sections are intended to provide clearer provisions for assessing values of lands compulsorily acquired. When an objection in regard to compensation is referred to the court, the judge hearing a land reference shall appoint two assessors to assist and aid the judge who, inter alia, look into the valuation report and/or any expert evidence before coming to a fair compensation. The requirement for the judge to be guided by the assessors is warranted as the judge is not an expert in land valuation. Therefore, the opinion of the assessor is deemed necessary. The intention of the Parliament could be gleaned from the following excerpt at p 4 of the Parliamentary *Hansard* dated 15 May 1997:

Setiausaha Parlimen Kementerian Tanah dan Pembangunan Koperasi (Dato' Haji Fauzi bin Haji Abdul Rahman): Tuan Yang di-Pertua, saya mohon mencadangkan

A iaitu suatu rang undang-undang untuk meminda Akta Pengambilan Tanah 1960 dibacakan kali kedua sekarang.

...

Fasal 23 adalah bagi memasukkan beberapa peruntukan baru bagi memastikan
B prosiding di Mahkamah mengenai bantahan terhadap jumlah pampasan dapat didengar dan dipertimbangkan dengan sewajarnya.

Seksyen baru 40A memperuntukkan supaya Mahkamah yang akan mengadili kes tersebut terdiri daripada hakim yang akan dibantu oleh dua orang penilai yang akan dilantik oleh hakim yang berkenaan. Seorang daripadanya adalah merupakan
C penilai swasta yang berdaftar di bawah 'Valuers, Appraisers and Estate Agents Act 1981', sementara seorang lagi adalah merupakan penilai kerajaan.

Seksyen 40B pula menetapkan bahawa adalah menjadi keperluan undang-undang bagi kedua-dua penilai yang dilantik untuk hadir ke Mahkamah apabila diarah. Setiap penilai swasta yang dilantik oleh hakim akan dibayar fee sebanyak tidak
D melebihi daripada RM500 sehari dan tindakan disiplin boleh diambil ke atas penilai yang gagal hadir di Mahkamah tanpa alasan yang munasabah di bawah akta yang berkenaan.

Sementara seksyen 40C pula memperuntukkan supaya pendapat kedua-dua penilai
E tersebut berhubungan dengan apa-apa perkara mengenai pampasan hendaklah diberikan secara bertulis dan hendaklah juga direkodkan oleh hakim.

Seksyen 40D memperuntukkan bahawa keputusan Mahkamah berhubung jumlah pampasan hendaklah berdasarkan jumlah yang diputuskan oleh kedua-dua penilai yang dilantik. Walau bagaimanapun, dalam keadaan di mana pendapat kedua-dua
F berbeza, maka hakim berkenaan hendaklah memilih salah satu daripada jumlah nilaian yang dilantik dan jumlah pampasan yang akan di 'award' hendaklah merupakan jumlah yang diputuskan oleh penilai berkenaan. Apa-apa keputusan yang dibuat di bawah seksyen ini adalah muktamad.

G **[27]** The critical question in this instant appeal, one to which we presently turn, is whether the decision of the court below is appealable under s 49(1) of the Act as it involves a question of law. In our view, this instant appeal in substance pertains to the alleged inadequacy of compensation awarded by the High Court. Therefore, in essence, the appellant is challenging the award of
H compensation decided by the assessors. With respect, the contention of learned counsel for the appellant that this instant appeal involves a question of law flies on the face of the appellant's notice of appeal. The appellant's notice of appeal dated 4 January 2016 states as follows:

I AMBIL PERHATIAN bahawa Perayu, HARTAWAN DEVELOPMENT SDN BHD yang tidak berpuas hati dengan sebahagian keputusan YA Dato' Mohd Fairuz bin Jaffril, Hakim, Mahkamah Tinggi Malaya di Melaka yang diberikan pada 21 Disember 2015, merayu ke Mahkamah Rayuan terhadap keputusan tersebut yang memerintahkan bahawa:

(a) ...

(b) *Tidak ada pampasan untuk penjejasan terbabit (injurious affection) bagi tanah-tanah Lot 701, 698, 893, 700 dan 5248*. (Emphasis added.)

[28] This was reinforced by the appellant's memorandum of appeal dated 7 March 2016, which states at para 3 as follows:

> Pesuruhjaya Kehakiman yang bijaksana dan penaksir-penaksir tersilap ... *kerana gagal mempertimbangkan bahawa baki Tanah terlibat dan Lot 698, 893, 700 dan 5248 mengalami penjejasan terbabit (injurious affection) akibat pengambilan sebahagian tanah daripada Tanah terlibat*. (Emphasis added.)

[29] Adverting to the grounds of judgment of the learned JC, it is clear that the issue of injurious affection as a result of the requisition has been duly considered by the two assessors. The two assessors were in agreement that the TNB transmissions lines and rentis have been in existence on the said lands prior to the acquisition and had already caused the value of the said lands to diminish. Therefore, the diminution in the value of the said lands was not a direct result of the acquisition.

[30] We entertained no doubt that this instant appeal was nothing more than an attempt to circumvent the salient provisions of ss 40D and 49(1) of the Act which precludes any party from appealing against the award of compensation.

[31] Before we conclude, it is pertinent to note that 'injurious affection' and 'severance damage' are closely related to each other. Both 'injurious affection' and 'severance damage' relate to the land retained by a person after the other land is compulsorily acquired from the person. Both relate to a reduction of value of retained land. In *Re McCain and City of Saint John* [1965] 47 DLR (2d) 164, Ritchie JA said at p 181:

> Severance, in my opinion, is a form of injurious affection.

CONCLUSION

[32] For the reasons stated above, we upheld the preliminary objection raised by the respondent. In the result, we struck out the appeal with costs of RM5,000 (subject to payment of allocator) and the deposit was ordered to be refunded to the appellant.

Appeal struck out with costs of RM5,000 and deposit ordered to be refunded.

Reported by Jacqueleen Kho